

Senate Bill No. 339

Passed the Senate August 26, 2004

Secretary of the Senate

Passed the Assembly August 24, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend, repeal, and add Section 695.221 of the Code of Civil Procedure, and to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 339, Alpert. Private child support collectors.

(1) Existing law governs the collection of child support by local child support agencies.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would limit the child support that may be collected and the fees that may be charged by a private child support collector, require that entity to provide specified notices and disclosures to the child support obligee in a written contract and during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to local child support agencies and other governmental entities, regulate advertising by the private child support collector, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would require court orders for child support to include an obligation to pay fees owed to a private child support collector, as specified.

(2) Existing law provides that the satisfaction of a money judgment for support shall be credited first against the current month's support, then against the accrued interest that remains unsatisfied, then against the principal amount of the judgment that remains unsatisfied.

On or after January 1, 2009, this bill would revise that provision to require that after the money is first credited against the current month's support, the money shall next be credited against the principal amount of the judgment remaining unsatisfied, then against the accrued interest that remains unsatisfied.



The people of the State of California do enact as follows:

SECTION 1. Section 695.221 of the Code of Civil Procedure is amended to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money shall be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation (CCSA) system, all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.

(e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the interest and then the principal amount of past due support that has been assigned to the state pursuant to Section 11477 of the Welfare and Institutions Code and federal law prior to the interest and then principal amount of any other past due support remaining unsatisfied.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC) program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then those arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then those arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then those arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then such arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then those arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(h) This section does not apply to child support collected by a private child support collector pursuant to Chapter 9 (commencing with Section 5610) of Part 5 of Division 9 of the Family Code.



(i) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 695.221 is added to the Code of Civil Procedure, to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money shall next be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(c) Any remaining money shall be credited against the accrued interest that remains unsatisfied.

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation System (CCSAS), all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.

(e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the principal amount of past due support that has been assigned to the state pursuant to Section 11477 of the Welfare and Institutions Code and federal law and then any interest due on that past due support, prior to the principal amount of any other past due support remaining unsatisfied and then any interest due on that past due support.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC)



program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(3) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(4) Any remaining money shall next be credited against the principal amount of the arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the interest that accrued on those arrearages.



(h) This section does not apply to child support collected by a private child support collector pursuant to Chapter 9 (commencing with Section 5610) of Part 5 of Division 9 of the Family Code.

(i) This section shall become operative on January 1, 2009.

SEC. 3. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. This chapter shall be known and may be cited as the Private Child Support Collection Act.

5611. For purposes of this chapter, a “private child support collector” means any individual, corporation, attorney, nonprofit organization, or other nongovernmental entity that engages in the business of collecting child support. “Private child support collector” does not include attorneys who address issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in post judgment or modification proceedings related to any of those actions. A private child support collector includes any private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support. As used in this subdivision, “substantially” means that at least half (50 percent) of the attorney’s business, either in terms of remuneration or time spent, is comprised of the activity of seeking to collect or enforce child support obligations for other individuals.

5612. A private child support collector is subject to this chapter if the private child support collector contracts with a child support obligee who is a resident of this state to collect child support payments from the obligor for that obligee. This chapter shall apply to all contracts entered into on or after January 1, 2005.

5613. A private child support collector may not enter into a contract with an obligee to collect child support if any of the following exist:

(a) The child support is currently assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code or is owed to the county for any reason.



(b) The child support to be collected is for current support.

(c) The obligor has made payments on the child support obligation during the six-month period prior to the execution by the obligee of the contract with the private child support collector.

5614. (a) A private child support collector may collect a fee of not more than 30 percent on any payment collected on behalf of the obligee, except as otherwise provided by this section. This fee may be retained from the amounts collected by the private child support collector under this chapter and the contract. A private child support collector may assess additional charges for the costs of collecting child support, including attorney's fees, court costs, filing fees, recording fees, and any other charges or compensation, only from the obligor, and only if expressly permitted by the child support order and to the extent permitted by other law.

(b) The fee authorized by subdivision (a) may not include a percentage of any portion of the following:

(1) Child support collected after expiration of the contract or after the obligee cancels the contract pursuant to this contract, except as provided in subdivision (d) of Section 5619.

(2) Child support collections owed to a county due to the payment of public assistance or attributable to the actions of a governmental child support agency or its contractor.

(3) Current support.

(4) Proceeds from a withholding order for child support that has been in place with the same employer for six months and has yielded six months' of withholding order payments.

(c) Funds that are collected, and fees that are deducted, by a private child support collector may not be credited against current support. If the child support order makes the obligor responsible for payment of collection fees and costs, fees that are deducted by a private child support collector may not be credited against child support arrearages or interest owing on arrearages or any other money owed by the obligor to the obligee.

5615. If an obligee contracts with a private child support collector to collect child support, the private child support collector shall provide the following notices:

(a) Prior to commencing collection activities, written notice to the local child support agency that is enforcing the obligee's support order, if known, or the local child support agency for the county in which the obligee resides as of the time the contract is



signed by the obligee. The notice shall identify the obligee and the amount of the arrearage.

(b) If the order for child support requires payment of collection fees and costs by the obligor, then not later than five days after the date that the private child support collector makes its first collection, written notice shall be provided to the obligor of (1) the amount of arrearages subject to collection, (2) the amount of the collection that shall be applied to the arrearage, and (3) the amount of the collection that shall be applied to the fees and costs of collection. The notice shall provide that, in addition to any other procedures available, the obligor has 30 days to file a motion to contest the amount of collection fees and costs assessed against the obligor as well as the amount of the arrearages subject to collection.

(c) The notices required by this section shall be served in compliance with Section 1013 of the Code of Civil Procedure.

5616. A private child support collector shall credit support payments collected pursuant to this chapter to the child support arrearage described in the contract and may retain the fees authorized by this chapter, as provided for in the contract.

5617. (a) A private child support collector shall disclose to the obligee by mail or, at the obligee's request, via secure Internet or telephone access, on a monthly basis, all of the following:

(1) The source and form of each payment received from the obligor, including the date of collection, as defined by regulations of the Department of Child Support Services, and the date of receipt by the private child support collector.

(2) The amount of each child support payment received from the obligor and, if the child support order does not require payment of collection fees and costs by the obligor, the amount and percentage of each payment that was deducted by the private child support collector as a fee.

(3) The balance remaining to be collected by the private child support collector under the contract.

(b) The private child support collector shall provide a copy of the statement described in subdivision (a) on a monthly basis to the local child support agency that is enforcing the obligee's child support order, if known, or the local child support agency for the county in which the obligee resides as of the time the contract is signed by the obligee.



(c) The information required by this section shall be provided by the 10th day of the calendar month following the period to which the information relates.

5618. A local child support agency shall send all child support payments that the local child support agency collects for the obligee directly to the obligee and may not direct payments for the obligee to a private child support collector.

5619. (a) An obligee shall have no further obligation pursuant to the contract, and no person shall have any obligation to pay private child support collector fees beyond those already collected, after the contract expires pursuant to subdivision (b) or is cancelled by the obligee pursuant to subdivision (c), except as provided in subdivision (d).

(b) A private child support collection contract shall expire without action by any party on the earlier of the following:

(1) Six months after execution of the contract if no payments have been collected by the private child support collector.

(2) The date on which all child support payments that the private child support collector has contracted to collect has been paid.

(c) (1) The obligee may cancel the contract under the following circumstances:

(A) At any time before midnight of the 10th business day after the contract is executed.

(B) At the end of any six-month period in which the total amount collected by the private child support collector and forwarded to the obligee is less than 10 percent of the total amount of the child support arrearage described in the contract.

(C) After any 12-month period in which the total amount collected by the private child support collector is less than 50 percent of the amount scheduled to be paid under a payment plan.

(D) When the private child support collector commits a material breach of any provision of the contract or material violation of any provision of this chapter with respect to the obligee.

(2) A notice of cancellation shall be made in writing, signed and dated by the obligee, and shall be effective when mailed or personally delivered to the private child support collector.

(d) Notwithstanding subdivision (a), a private child support collector may charge and collect a fee of not more than 30 percent



of a child support payment collected within two years after the expiration or cancellation of a contract if the payment is made to discharge, in whole or in part, a lien filed by the private child support collector prior to the expiration or cancellation of the contract.

(e) (1) If funds contracted to be collected by the private child support collector become subject to an assignment to the state pursuant to Section 11477 of the Welfare and Institutions Code, or to any other state, the contract shall be suspended to the extent of the amount subject to the assignment or in its entirety if the amount assigned exceeds the amount to be collected under the contract. If the assignment is extinguished, the contract may be reinstated by the private child support collector for the remaining balance, if any, of the contract term.

(2) A private child support collector who receives notice that child support has been assigned to the state, or any other state, shall upon receipt of the notice, cease any further collection activities and shall pay over to the assignee any moneys subject to the assignment, including any fees collected on those moneys, that are collected after that notice and that are in the possession or control of the private child support collector.

5620. Each obligee has the right to review all files and documents, both paper and electronic, in the possession of the private child support collector regarding that obligee's case that are not required by law to be kept confidential. The obligee shall, during regular business hours, be provided reasonable access to and copies of the files and records of the private child support collector regarding all moneys received, collection attempts made, all liens filed or recorded, all judicial enforcement proceedings, fees retained or paid to the private child support collector, and moneys disbursed to the obligee. The private child support collector may not charge a fee for access to the files and records, but may require the obligee to pay up to three cents (\$0.03) per page for the copies prior to their release.

5621. A private child support collector's contract with an obligee shall be in writing. The contract shall be delivered to the obligee in a paper form that the obligee may retain for his or her records. The contract shall include all of the following, in at least 12-point print:



(a) Notice that local child support agencies in California provide free services for those seeking child support enforcement.

(b) A description of collection fees and an explanation of how the fees are calculated.

(c) If applicable, a statement that the assignment of a child support obligation to a nongovernmental entity may result in the obligation being dischargeable if the child support obligor files for bankruptcy.

(d) A conspicuous statement, on the face of the contract, and in close proximity to the space reserved for the signature of the obligee, in a size equal to at least 12-point boldface type, as follows:

“This contract expires automatically under certain circumstances. You may cancel this contract at any time prior to midnight of the 10th business day after the date you sign the contract. You may also cancel this contract under other circumstances that are described in Section 5619 of the Family Code. To cancel this contract, mail or personally deliver a written, signed, and dated notice that states that you are canceling this contract, or words of similar effect. Send or deliver the notice to _____ (name of the private child support collector) at _____ (address of the private child support collector).”

(e) A statement that the private child support collector only collects child support arrearages, and not current child support payments.

(f) The following statements, on the first page of the contract:

“This contract calls for us to collect money owed to you, and not money owed to the state or county. If your child support is owed to the state or county because you are receiving or have received program benefits from CalWORKs or Temporary Assistance to Needy Families, then we cannot collect that money for you. Do not sign this contract unless you are entitled to all of the child support to be collected by us in the contract. If you start to receive program benefits from CalWORKs or Temporary Assistance to Needy Families during this contract, you must tell us.



“I declare that the child support to be collected for me pursuant to this contract is not assigned to the state or county as of the time I sign this contract. I agree that I will give written notice to the private child support collector if I apply for program benefits under CalWORKs or Temporary Assistance to Needy Families during the term of this contract. _____ (Signature of Obligee)”

5622. (a) Each private child support collector shall make the following disclosure in any advertisement, commercial, or other solicitation:

“(Name of private child support collector) is a private child support collector and not a governmental entity. (Name of private child support collector) charges a fee for services provided.”

(b) The disclosure required by subdivision (a) shall be printed in every written advertisement and solicitation as follows:

(1) In a type size that is at least equal to one-quarter of the largest type size used in the solicitation to advertise the collection service. In no event shall the disclosure be printed in less than 8-point type.

(2) In the same style and color of type used to advertise the collection service.

(3) Immediately above, below, or beside the advertised fee without any intervening words, pictures, marks, or symbols.

(4) In the same language as the advertisement.

(c) The disclosure required by subdivision (a) shall be broadcast in every radio or television advertisement and solicitation. For broadcast advertisement of 30 seconds or less, the disclosure may be shortened as follows:

“(Name of private child support collector) is not a governmental entity, and charges a fee for its services.”

(d) This section shall apply to an advertisement, commercial, or solicitation in English or any other language.

5623. (a) Any waiver of the rights and remedies provided to child support obligees or child support obligors by this chapter violates public policy and is void.



(b) A child support obligee is not liable to the obligor or to a third party for any violation by a private child support collector of the rights of the child support obligor or any third party.

(c) A private child support collector may not do any of the following:

(1) Enter into a payment agreement with an obligor that forgives, in whole or in part, support owed or that compromises the amount owed to the obligee without the written consent of the obligee to the specific proposed forgiveness or compromise. Nothing in this paragraph prevents the private child support collector from unilaterally waiving or offering to compromise the amount of its fee.

(2) Require the obligee to cease or refrain from seeking the services of a state or local child support enforcement agency.

(3) Collect or attempt to collect from the obligee any fee if a statute or court order requires the obligor to be responsible for a private child support collector's fees. This paragraph does not prevent retention of fees authorized by Section 5614, as provided by the contract.

(4) Contract for or seek liquidated damages for breach of contract against the obligee.

(5) Misstate the amount of the fee that may be lawfully paid to the private child support collector for the performance of the contract or the identity of the person who is obligated to pay that fee.

(6) Ask any party, other than the obligor, to pay the child support obligation, unless that party is legally responsible for the obligation or is the legal representative of the obligor.

(7) Send a communication that simulates legal or judicial process or that gives the appearance of being authorized, issued, or approved by a governmental entity, court, or attorney when it is not.

(8) Except as described in subdivision (b) of Section 5624, make any false representation of the amount of the child support obligation to be collected.

5624. (a) No private child support collector may collect or attempt to collect a child support obligation by means of any conduct that is prohibited to a debt collector collecting a consumer debt under Sections 1788.10 to 1788.16, inclusive, of the Civil Code. This chapter does not modify, alter, or amend the definition



of a debt or a debt collector under the Rosenthal Fair Debt Collection Act (Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code).

(b) A private child support collector who incorrectly states the amount of the child support obligation to be collected is not in violation of this chapter if the private child support collector has not received reasonable notice from either the obligee or from the state or local child support agency, or reasonable proof from the obligor, that payments have been received by the state or local child support enforcement agency.

(c) A private child support collector is not in violation of this chapter if it collects any amount after the obligee has obtained program benefits under CalWORKs or Temporary Assistance to Needy Families, if the obligee fails to notify the private child support collector of those benefits pursuant to subdivision (f) of Section 5621 and the private child support collector has not been otherwise notified that the obligee has obtained those benefits.

5625. (a) A private child support collector who fails to comply with any provision of this chapter with respect to any person shall be liable for the following:

(1) Any actual damages sustained by the person as a result of that failure.

(2) In addition to actual damages, a private child support collector who willfully and knowingly violates the provisions of this chapter shall be liable for a civil penalty in an amount determined by the court, which may not be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(3) The prevailing party in any action pursuant to this section shall be entitled to recover the costs of the action. Reasonable attorney's fees, which shall be based on the time necessarily expended to enforce the liability, shall be awarded to a prevailing party, other than a private child support collector, asserting rights under this section. Reasonable attorney's fees may be awarded to a prevailing private child support collector if the court finds that the party bringing the action did not prosecute the action in good faith.

(b) The remedies provided in subdivision (a) are cumulative and are in addition to any other procedures, rights, or remedies available under other provisions of law.



(c) In an action by an obligor under this chapter, the private child support collector shall have no civil liability under this chapter to the obligor under any circumstance in which a debt collector would not have civil liability under Section 1788.30 of the Civil Code.

(d) For purposes of this section, a person includes a local child support agency or any other agency that provides child support services pursuant to Title IV-D of the federal Social Security Act and that is responsible for collecting a child support obligation that the private child support collector has also contracted to collect. A local child support agency is not required to bring any action on behalf of a child support obligee or obligor for a violation of this chapter.

5626. Any action to enforce the provisions of this chapter may be brought within one year after the occurrence of the violation.

5627. If any provision of this chapter, or the application thereof, to any person or circumstance, is held invalid, the remaining provisions of this chapter, or the application of those provisions to other persons or circumstances, may not be affected thereby.

5628. Every court order for child support issued on or after July 1, 2005, and every child support agreement providing for the payment of child support approved by a court on or after July 1, 2005, shall include a separate obligation owed by the child support obligor to pay a fee of not more than 30 percent of any amount of past-due child support that is collected by a private child support collector pursuant to a contract complying with the requirements of this chapter and any other child support collections costs expressly permitted by the child support order. The obligation to pay the fee shall have the force and effect of a money judgment in favor of the private child support collector and the child support obligee, jointly. The obligation to pay the fee may be enforced by the private child support collector by any means available to the obligee for the enforcement of the child support order without any additional action or order by the court, however, the fee does not constitute child support.



Approved _____, 2004

Governor

